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## THE REPUBLIC OF BOSNIA AND HERZEGOVINA IN A NEW POLITICAL SPACE

### 1. BEFORE INDEPENDENCE

The Republic of Bosnia and Herzegovina (BiH) is one of the units of the former Yugoslavia which emerged as independent countries in the early 1990's. Following the example of neighbouring Slovenia, Croatia, and Macedonia, which declared themselves to be independent states, Bosnia and Herzegovina also decided to pursue its own statehood.

The case of Bosnia, however, cannot be compared with that of any other republic of the same provenance. Composed of three principal nationalities (Serbs, Croats, and Muslims), it has always been an ethnic cocktail. Its ethnic makeup did not favour internal unity; on the contrary, in a rising tide of claims made by ethnic interests, its situation became exceedingly complex and difficult.

The parliamentary election in BiH conducted in late 1990 opened a path towards independence and sovereignty. The poll brought success to the Muslim Democratic Action Party (SDA) led by the then prime minister Alija Izetbegović, winning 86 seats in a parliament of 240. The runner-up was the Serbian Democratic Party (SDS) which won 72 seats. The third major political movement present in the legislative body was the Croatian Democratic Community in Bosnia and Herzegovina (HDZ BiH), which secured 44 seats.<sup>1</sup> Thus established, the parliament unequivocally confirmed the republic's multi-ethnic character.<sup>2</sup> The leaders of the winning parties formed a 'grand coalition,' which was naturally headed by themselves.

<sup>1</sup> Cf. M. Bankowicz (ed.), *Historia polityczna świata XX wieku. 1945-2000*, Kraków 2004, p. 643.

<sup>2</sup> According to a 1991 census, the most numerous group were the Muslims with 43.6% of the total, followed by the Serbs with 31.2%, and the Croats with 17.2%. Other ethnicities made up the remaining 8%. The census confirmed a continued rise in the Muslim population over the past years (P. Eberhardt, *Między Rosją a Niemcami. Przemiany narodowościowe w Europie Środkowo-Wschodniej w XX wieku*, Warszawa 1996, p. 306).

On 15 October 1991, the parliament of Bosnia and Herzegovina, followed the example of the other republics, and announced their intention to proclaim independence. Importantly, however, the decision was taken without the participation or consent of the Serbian deputies, leading them to express their indignation; as a result they decided to establish their own, separate representative body. In late February and early March 1992, a referendum was held in Bosnia and Herzegovina on the creation of an independent state. The poll was boycotted by the Serbian population of the republic. As many as 99% of voters were in favour of independence. Faced with the near-unanimous endorsement of this crucial matter, expressed in this display of direct democracy, President Alija Izetbegović felt compelled to declare independence, which he did on 3 March 1992. Yet the decision was not free from controversy; the Serbs created obstacles in an effort to disrupt the approaching political situation, fearing the loss of their pre-existing status in the ethnic mosaic and in the republic's structure. In response, they created a Republika Srpska within Bosnia and Herzegovina on 27 March 1992. The declaration of independence triggered fierce fighting between, on the one hand, Croats and Muslims who supported independence, and Serbs on the other who opposed it.<sup>3</sup> The civil war thus begun and lasted almost three years during which all three groups – Serbs, Croats, and Muslims – equally carried out ethnic purges. The traumatic events escalated almost from day one. Initially, the Serbs enjoyed the most success. Led by Radovan Karadžić, they formed a self-proclaimed Republika Srpska which failed to receive recognition from any state. Somewhat later, the same fate befell a Croatian Republic of Herceg-Bosnia which was proclaimed on 3 July 1992.<sup>4</sup> The war had many facets: it revealed strictly ethnic issues as well as political and ideological divisions. After all, the warring parties stood for different cultures, traditions, and, more importantly, religions.<sup>5</sup>

The unending armed conflict came to the attention of the USA and NATO in mid-1993. A general policy was adopted to weaken the militarily superior Serbs by such means of combined operations by Croatian-Muslim forces. Both parties being keenly interested, a Muslim-Croatian Federation was formed on 18 March 1994. In this respect, American endeavours proved to be nearly successful.<sup>6</sup> The conflict kept escalating, causing fears that the hostilities might spill over beyond Bosnia and Herzegovina. Such concerns produced a desire to bring about a peace accord between the warring

<sup>3</sup> Bosnia and Herzegovina was recognized by the US on 6 April 1992, and by the European Community on 7 April of the same year. On 22 May 1992, BiH was admitted to the UN. Cf. S. Wojciechowski, *Integracja i dezintegracja Jugosławii na przełomie XX i XXI wieku*, Poznań 2002, pp. 81-82; L. Podhorodecki, *Jugosławia. Dzieje narodów, państw i rozpad federacji*, Warszawa 2000, pp. 207-208.

<sup>4</sup> R. Karadžić succeeded in mobilizing an almost 100,000-strong army, enabling the Serbs to drive the Muslim army from 70% of the territory of Bosnia and Herzegovina.

<sup>5</sup> These issues are commented on by many authors including M. Waldenberg, *Rozbicie Jugosławii. Od separacji Słowenii do wojny kosowskiej*, Warszawa 2003, passim; idem, *Kwestie narodowe w Europie Środkowo-Wschodniej. Dzieje, idee*, Warszawa 1992, passim; and idem, *Narody zależne i mniejszości narodowe w Europie Środkowo-Wschodniej*, Warszawa 2000, passim. Also cf. L. Podhorodecki, *Jugosławia. Dzieje...*, pp. 207-208.

<sup>6</sup> Cf. M. Bankowicz, *Historia...*, pp. 811-812.

parties. On 25 April 1994, an international Contact Group was formed by the USA, Russia, Britain, France, and Germany with a view to restoring peace. The Group was instrumental in the signing of as many as eighteen truces; none of them, however, were respected. One possible solution was the Vance-Owen peace plan which proposed that Bosnia and Herzegovina be divided into ten autonomous provinces with no more between them than a common central government. The provinces would be of mixed ethnic composition, with each of the major ethnicities dominant in one province. In addition, to avoid future conflict over Serbian claims, regions in which the Serbian population predominated would be arranged in a way that would ensure that they did not border with Serbia. Surprisingly, the Serbs accepted the plan despite the fact that it was unfavourable to them, and the Croats were in favour, too. Unfortunately, the Muslims rejected the solution.<sup>7</sup> Both the Vance-Owen peace plan for Bosnia and Herzegovina and another proposed by David Owen in cooperation with Cyrus Vance and Thorvald Stoltenberg, which would make Bosnia and Herzegovina a confederation of three republics, with the cities of Sarajevo and Mostar subject to international administration, failed to win the approval of the Muslims.<sup>8</sup> Incessant warfare did nothing to bring a resolution to the conflict any closer; nor were the intermittent peace talks any more successful. Faced with this situation, the UN and NATO felt compelled to take radical steps to put an end to the bloodshed and the increasing escalation of the conflict. In August 1995, NATO countries launched a series of aerial attacks on Serbian troops near Sarajevo. The action was a direct response to a July 1995 Serbian attack on Muslims in which they captured the city of Srebrenica and massacred its population. An end to the civil war was also hastened by the victory of Muslims and Croats over Serbian troops. The pivotal event was the regaining of the Krajina and East Slavonia, which the Serbs had seized at an early stage in the conflict. This fact coincided with Belgrade's decision to withdraw its support for Radovan Karadžić's polices. Such a turn of events aroused hopes for a speedy resolution of disputes and a conclusion of a peace accord.<sup>9</sup> Towards this end, talks were initiated in Geneva in early September 1995 in an effort to end hostilities in Bosnia and Herzegovina.

The talks were attended by the ministers of foreign affairs of Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia, representatives of the Contact Group, and EU mediator Carl Bildt. Once convened, the body agreed to divide Bosnia and Herzegovina into two constituent parts, one called the Muslim-Croatian Federation of Bosnia and Herzegovina, the other the Republika Srpska. The government of the Federal Republic of Yugoslavia accepted the existence of Bosnia and Herzegovina. It was agreed that each part could have its own armed force and a self-government legitimized by its own constitution. Unfortunately, the agreement did not include the exact dividing line between both constituent parts, nor did it resolve the complex matter of territory, which may lead to a future outbreak of a now-latent conflict. The Geneva

<sup>7</sup> Cf. M. Waldenberg, *Rozbicie Jugosławii...*, pp. 224-226.

<sup>8</sup> For more on the subject, see *ibid.*, p. 227.

<sup>9</sup> L. Podhorodecki, *Jugosławia. Dzieje...*, pp. 210-211.

talks failed to resolve all the sensitive issues between the opposing parties; nor was a final peace consensus developed. It thus became necessary to hold another round of talks, with the venue this time outside Europe – in New York. During a meeting on 25 September 1995, it was decided to establish joint bodies like a parliament, government, collective presidency, and a Constitutional Court. A free, democratic election was announced to be held under the supervision of the Organization for Security and Cooperation in Europe. It is worth noting that the lack of binding decisions on borders and the territorial division did not impede the cessation of hostilities. A truce was signed on 10 October 1995. All matters that remained unresolved in New York were considered at the next meeting in Dayton, Ohio, on 1 November 1995.<sup>10</sup> There, representatives of Serbia, Croatia, Bosnia and Herzegovina, a representative of the EU, the US secretary of state, and the deputy-foreign minister of Russia met at the Wright-Patterson air base to tie up the loose ends left after preceding decisions taken in Geneva and New York. A series of accords were agreed upon which restored peace, and was known as the General Framework Agreement for Peace in Bosnia and Herzegovina.<sup>11</sup> Notably, the general agreement came with as many as 11 annexes (1A Military aspects of the peace agreement and addenda; 1B Regional stabilization; 2 Internal inter-ethnic boundaries and related issues; 3 Elections; 4 Constitution, 5 Arbitration; 6 Human rights; 7 Refugees and displaced persons; 8 Committee for the Protection of National Heritage; 9 Operation of public utilities in Bosnia and Herzegovina; 10 Civilian aspects in the implementation of the peace accord; 11 International policing forces).<sup>12</sup> The chief aim of the accord was to achieve an integration of a state structured as a federation composed of two principal units, the Muslim-Croatian Federation and the Republika Srpska.<sup>13</sup> The future of Sarajevo was decided by placing it under the Muslim-Croatian Federation's supervision. Importantly, it was decided to prohibit those declared to be war criminals by the International Criminal Tribunal for the Former Yugoslavia (ICTY) based in the Hague from holding any public offices. Peace in BiH would be assured by a UN peace-keeping force.<sup>14</sup> All final contentious issues in BiH were to be resolved in a peace treaty signed in Paris on 14 December 1995.<sup>15</sup>

<sup>10</sup> S. Wojciechowski, *Integracja i dezintegracja...*, pp. 96-97.

<sup>11</sup> President Slobodan Milošević of Serbia, President Franjo Tuđman of Croatia, President Alija Izetbegović of Bosnia and Herzegovina. Present were also US Secretary of State Warren Christopher, EU representative Carl Bildt, and Russian Vice-Minister of Foreign Affairs Igor Ivanov, cf. S. Wojciechowski, *Integracja i dezintegracja...*, p. 97.

<sup>12</sup> Cf. W. Konarski, A. Koseski (eds.), *Balkany. Etnokulturowe podłoże konfliktów*, Pułtusk 2006, pp. 153-169.

<sup>13</sup> The former occupies 51% of the country's entire area, the remaining part belongs to the Republika Srpska.

<sup>14</sup> Those were 60,000-strong IFOR (Implementation Force) units which were to take the place of the UNPROFOR (United Nations Protection Force) stationed there, cf. M. Kuczyński, *Krwawiąca Europa. Konflikty zbrojne i punkty zapalne w latach 1990-2000: tło historyczne i stan obecny*, Warszawa 2001, pp. 231-232; and S. Wojciechowski, *Integracja i dezintegracja...*, pp. 97-99.

<sup>15</sup> The treaty repeated the Dayton accords. A document of international calibre, it was signed by the same presidents as the Dayton accords. The provisions were signed by the presidents of the US

## 2. THE LEGAL BASIS OF THE POLITICAL SYSTEM OF THE REPUBLIC OF BOSNIA AND HERZEGOVINA

The Dayton accords created the legal basis for the political system of the independent state. By way of a reminder, the agreement was initialled on 21 November 1995, by the presidents of BiH, Serbia, and Croatia. Bosnia and Herzegovina's constitution was an inseparable element of the General Framework Agreement on Peace in BiH which was signed in Paris on 14 December 1995. The constitution was Annex 4 to the agreement. It provided for Bosnia and Herzegovina as a state with a parliamentary system of government.<sup>16</sup> The constitution of BiH is not a large document as constitutions go. It consists of a preamble and 12 articles (I Bosnia and Herzegovina, II Human Rights and Fundamental Freedoms, III Responsibilities of and Relations Between the Institutions of Bosnia and Herzegovina and the Entities, IV Parliamentary Assembly, V Presidency, VI Constitutional Court, VII Central Bank, VIII Finances, IX General Provisions, X Amendment, XI Transitional Arrangements, XII Entry into Force) and two annexes. The preamble is typical in meeting the generally accepted criteria for such introductions. It makes references to respect for human dignity, freedom, and equality, and to peaceful resolutions of conflicts. Thus the introduction to the supreme law incorporates universal values characteristic for democracies. Bosnians, Croats, and Serbs as constitutional nations of the Republic expressed their shared respect for international law. They also pledged to do their utmost to ensure the territorial integrity and independence of their state.<sup>17</sup> According to the 1995 constitution, Bosnia and Herzegovina is a federal state composed of two main entities: the Federation of Bosnia and Herzegovina and the Republika Srpska (Art. I, clause 3). Further, Bosnia and Herzegovina is a democratic state under law (Art. I, clause 2)<sup>18</sup> which implements a wide range of human rights and fundamental freedoms (Art. II) guaranteed as one of the supreme principles of the state.<sup>19</sup> It seems that in the present reality the newly cre-

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and France, prime ministers of Russia, Britain, Germany, and Spain (then presiding in the EU), cf. W. Walkiewicz, *Jugosławia: byt wspólny i rozpad*, Warszawa 2000, p. 260.

<sup>16</sup> The constitution of BiH was adopted quite unconventionally, with no participation from citizens, who should have been the most interested party. The wording of the constitution was decided by representatives of the countries participating in the peace conference concluding the war in BiH. The act is considered an incomplete ("small") constitution as it does not regulate economic matters. It is, moreover, a rigid constitution. Art. X of the constitution of BiH places the restriction that an amendment may be made by a 2/3 majority of the present and voting members of the Parliamentary Assembly. Further, no amendment may in any case abolish or limit human rights and fundamental freedoms referred to Art. II.

<sup>17</sup> Cf. preamble to the constitution of BiH of 14 December 1995.

<sup>18</sup> This provision is to be understood literally as per definition accepted in constitutional law. A democratic state under the rule of law is a state governed by the law: its constitution is the supreme law which provides for institutions safeguarding this all-important principle.

<sup>19</sup> According to Annex 6, a Human Rights Committee was formed which was intended to accord these matters special attention. Within the Committee's structure is the Office of the Ombudsman (human rights advocate) and the Human Rights Chamber.

ated Human Rights Committee is especially important, whose *raison d'être* is to resolve issues of alleged or obvious crimes of discrimination, crimes committed by the police against citizens, administrative delays in issuing documents, freedom of religion, freedom of speech, discriminatory court rulings, discrimination in government agencies and schools (Art. II, clause 4). Importantly, the makers of the constitution took particular pains to extend protection to refugees and displaced persons. To improve their situation, a Committee for Refugees and Displaced Persons was created (Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina). In 2001, the High Representative transformed it into a State Committee for Refugees.

The Republic of Bosnia and Herzegovina pledged to observe human rights and fundamental freedoms of the individual, broadly accepted civil liberties, and international laws concerning human rights (Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina, Annex I to the BiH Constitution).<sup>20</sup> According to Art. II clause 8 of the constitution of BiH of 14 December 1995, the government of the republic is obliged not to limit access to information concerning human rights to any organizations which monitor their implementation on its territory. Art. III of the constitution draws clear distinctions in the responsibilities between the republic and its institutions on the one hand, and those of its entities with their respective authorities on the other. The central government of BiH retains competence in foreign policy, foreign trade, monetary and customs policies, financial resources to cover the republic's international obligations, regulation of immigration policy and refugee relief, combating international and inter-entity crime, cooperation with Interpol, provision of inter-entity and international transportation and communication, and air traffic control.<sup>21</sup> As per the principle of presumed competence, all matters not expressly vested by the constitution in the institutions of the republic remain the responsibility of both constituent entities of the federal structure: the Federation of Bosnia and Herzegovina and the Republika Srpska. Both entities have a right to establish diplomatic contacts with neighbouring countries subject to the condition that such contacts do not violate the sovereignty and territorial integrity of Bosnia and Herzegovina and are approved by the Parliamentary Assembly. Art. III clauses 3 and 4 of the constitution states that the central government is responsible for the

<sup>20</sup> The following international laws apply: The Convention on the Prevention and Punishment of the Crime of Genocide of 1948, Geneva Conventions I-IV on the Protection of War Casualties of 1949, and Geneva Protocols I-II of 1977, the Convention Relating to the Status of Refugees of 1951 and the Protocol to this convention of 1996, the Convention on the Nationality of Married Women of 1957, the Convention Relating to the Solution of the Problems of Stateless Persons of 1961, the International Convention on Eliminating all Forms of Racial Discrimination of 1965, the International Covenant on Economic, Social, and Cultural Rights of 1966, the Convention against Torture and other Cruel, Inhuman, or Degrading Treatment and Punishment of 1948, the European Convention on the Prevention of Torture, Cruel, Inhuman, or Degrading Treatment and Punishment of 1987, the Convention on the Rights of the Child of 1989, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990, and the European Charter of Regional and National Languages of 1994.

<sup>21</sup> Cf. W. Konarski, A. Koseski (eds.), *Balkany. Etnokulturowe...*, pp. 172-173.

security of all persons in its jurisdiction. The Republic of Bosnia and Herzegovina may assume the competences of the respective entities only upon their prior request or when compelled to do so to protect the sovereignty, territorial integrity, political independence, and the state's international personality (Art. III, clause 5). As mentioned above, Bosnia and Herzegovina has adopted a parliamentary form of government. In accordance with Montesquieu's tripartite separation of powers, the central government has been divided into the legislative, the executive, and the judicial branches. In BiH, the legislative power belongs to a bicameral Parliamentary Assembly composed of the House of Peoples (the upper chamber) and the House of Representatives (the lower chamber) (Art. IV). Significantly, the House of Peoples is not elected by popular vote. It consists of fifteen delegates representing the respective ethnic communities inhabiting BiH territory (i.e., Bosnians, Croats, and Serbs). Candidates to this chamber are chosen by the parliaments of the respective entities according to the following parity: 2/3 of delegates come from the Muslim-Croatian Federation (i.e., five Bosnians and five Croats), while 1/3 are selected by the Republika Srpska (five Serbs). In the BiH Federation, the House of Peoples names ten deputies, in the Republika Srpska the National Assembly elects five representatives. The quorum in the House of Peoples is nine, provided there are at least three representatives from each of the constitutional nations (i.e., three Bosnians, three Croats, and three Serbs) (Art. IV, clause 1 of the Constitution).

It should be emphasized that the constitution's ethnic rules are designed to maintain a balance between the nationalities represented on government bodies. Considering the background processes leading up to the creation of the new political system in the republic, such rules seem to be a distinctive feature of the new state. The lower chamber, the House of Representatives of the Republic of Bosnia and Herzegovina, unlike the House of Peoples, is chosen by general election which is direct, free, and secret (Art. IV, clause 2 of the constitution). The rule has been adopted that 2/3 (that is, 28 deputies), are chosen from the BiH Federation, and 1/3 (14 deputies) from Republika Srpska. Like the House of Peoples, the House of Representatives is elected for a four-year term. The House of Representatives participates in legislative procedures and approves the composition of the Council of Ministers. Members of the House of Representatives are protected by legal immunity; that is, they are exempt from prosecution and litigation for acts considered to be part of their parliamentary duties. The combined chambers make up the Parliamentary Assembly of the Republic of Bosnia and Herzegovina which enjoys competences typical of legislatures in other democratic states under the rule of law. These include the enactment of laws necessary to implement the decisions of the Presidency of the Republic or to perform the constitutional obligations of the Assembly; making decisions about the sources and volume of the revenue needed for the work of BiH institutions and international obligations; approving the budget of BiH institutions; and ratifying international treaties signed by the Republic. In addition, its responsibilities embrace regulating any other matters under its obligation to perform tasks assigned to it by one of the entities of BiH. The parliament follows the principle that any laws passed

by the Parliamentary Assembly must be approved by each chamber. Laws are passed by the majority of deputies present. Here again, equal ethnic parity is strictly observed in that a majority is valid if those voting are made up of at least 1/3 of deputies from each entity of the Republic.<sup>22</sup> If no agreement is reached within the prescribed five days, the controversial resolution of the Parliamentary Assembly is deferred to the Constitutional Court (Art. IV, clauses 3e and 3f).

The executive branch in the Republic of BiH consists of the Presidency of the Republic and the Council of Ministers (Art. V, clause 4a). The role of the head of state is played by a three-person Presidency, with each member representing one ethnic community: a Bosnian, a Croat, and a Muslim. The first two are elected in the Federation of BiH, and the representative of Serbs is chosen by the Republika Srpska. The term of office of each collective head of state is four years.<sup>23</sup> Members of the Presidency set their own rules of action. From among their number they elect a Chairman. The process respects the rule that the one who wins the greatest popular vote in his constituency becomes the first Chairman. Then the others serve the office in rotation every eight months (Art. V, clauses 2a and 2b).<sup>24</sup> Such clauses reaffirm the ethnic rule which is a distinctive feature of the contemporary political system of the Republic of BiH.<sup>25</sup> For a collective Presidency to function, it is crucial for its members of different ethnic backgrounds to reach agreement, which in practice is not always easy. A lack of consensus is provided for by the 1995 Constitution of BiH in Art. V,

<sup>22</sup> Should this prove impossible, the speaker of the chamber and his deputies meet within three days and attempt to bring about a consensus. If even that is unsuccessful, a decision is made by the Chamber by a majority of those present and voting (Art. IV, clause 3d of the constitution). It is a typical systemic principle in BiH that the vital interests of each constituent nation must be protected. Consequently, whenever a decision of the Parliamentary Assembly would be harmful to one nation, its approval by a majority is insufficient. For such a decision to be taken, it should be supported by a majority of the present and voting deputies the House of Peoples of that nationality which voices objections. If this does not happen, the speaker of the House of Peoples convenes a Joint Committee with the aim of reaching an agreement. The committee is made up of three deputies, a Bosnian, a Croat, and a Serb.

<sup>23</sup> In the period from October 1996 to October 1998, the Presidency included: Alija Izetbegović (Bosnian), Kresimir Zubak (Croatian), Momčilo Krajišnik (Serbian); in 1998-2002, Alija Izetbegović until 2000, after his resignation he was temporarily replaced by Halid Genjć, who served in the office until March 2001, and then Beriz Belkić chosen by the National Assembly (all Bosnian), Croats were represented by Ante Jelavić, removed by the High Representative in March 2001, and Jozo Krizanović elected by the Parliamentary Assembly. At the time, the Serbs were represented by Živko Radišić. In 2002-2006, Bosnia was represented by Sulejman Tihić, Croatia, until March 2005, by Dragan Čović, who was removed by the High Representative, and Ivo Miro Jović chosen by the Parliamentary Assembly, and Serbia by Mirko Šarović until April 2003, from this point until the next election it was Borislav Paravac chosen by the Parliamentary Assembly. In the present term from October 2006 to October 2010 the members are Haris Silajdžić (Bosnian), Željko Komšić (Croatian) and the Serb Nebojša Radmanović. See at <<http://www.electionworld.org/bosna.htm>> (accessed 5 May 2008).

<sup>24</sup> Also cf. W. Konarski, A. Koseski (eds.), *Balkany. Etnokulturowe...*, p. 176.

<sup>25</sup> I wrote about this in E. Bujwid-Kurek, *Państwa poługosłowiańskie. Szkice politologiczne*, Kraków 2008, pp. 136-148.



clause 2. The scope of responsibilities guaranteed to the Presidency is impressive and clearly indicates that it is an executive body. Its tasks include conducting the foreign policy of BiH, appointing ambassadors and other overseas representatives of the state (with a maximum of 2/3 of such representatives from the Federation of BiH), representing BiH in international and European organizations and institutions, taking action to obtain membership of organizations and institutions to which the republic does not yet belong, negotiating and persuading the Parliamentary Assembly to agree to ratification of treaties signed by BiH, executing the decisions of the Parliamentary Assembly, proposing annual budgets following government recommendation, submitting to the Parliamentary Assembly reports of expenditure it has incurred at least once per annum, cooperating with international organizations and NGO's in BiH, and performing any other tasks entrusted to it by the Parliamentary Assembly or the entities (Art. V, clause 3 of the constitution). Another important responsibility of the Presidency is to designate a prime minister. As to the relationship between the Presidency and the Parliament, the former is constitutionally entitled to dissolve the House of Peoples subject to Art. IV, clause 3g of the constitution. In an important provision, the constitution of BiH expressly states that members of the Presidency shall be the civilian command authority over the armed forces. To coordinate the activities of the armed forces, members of the Presidency form a Standing Committee on Military Matters (Art. V, clause 5).

Apart from the collective Presidency, the state apparatus of an independent country like the Republic of Bosnia and Herzegovina contains a government (Council of Ministers). As has been mentioned, the appointment of the *primus inter pares* (Prime Minister) is made by the Presidency. The next move in forming a cabinet belongs to the newly appointed Prime Minister, who nominates his ministers. A newly formed government does not commence its functions until it receives a vote of confidence of the House of Peoples (Art. V, clause 4).<sup>26</sup> The creation of more ministries suggested a large increase in the responsibilities of the Council of Ministers, which was granted many powers typical of a centralized executive. Such a solution was to be among the chief factors that helped to stabilize the political system of the young republic.<sup>27</sup>

A third branch of government is the judiciary, to which the lawmakers accorded particular care. The nine-member Constitutional Court exercises this authori-

<sup>26</sup> On the strength of the Dayton accords of 21 November 1995, only three ministries were established: The Ministry of Foreign Affairs, the Ministry of Foreign Trade, and Ministry of Civilian Affairs. Two more were created in 2000: The Ministry of Finance and the Ministry of Human Rights. Even more were formed in 2002, including the Ministry of Justice, the Ministry of Security, and the Ministry of Transport.

<sup>27</sup> The present author shares the position of P. Codogni, 'Bośnia i Hercegowina', *Europa Środkowo-Wschodnia*, Vol. 13 (2003), pp. 54-55. Like all other government bodies, in the Republic of Bosnia and Herzegovina, the ministries implement the parity principle guaranteeing an equal share in government to all three constitutional peoples. By the end of 2002, each ministry included one Bosnian, one Croat, and one Serb, who rotated as Minister and Vice-Minister every week. However, at Paddy Ashdown's suggestion, that was changed and since then each ministry is headed by a minister and two Vice-Ministers who serve their functions throughout their term, cf. *ibid.*, p. 55.

ty according to Art. VI of the constitution of the BiH. The court is composed of four judges selected by the Federation of BiH, two named by the Republika Srpska, with the other three appointed by the President of the European Court of Human Rights, who is required to make his decision in consultation with the Presidency. Judges are elected in different ways in the respective entities. For the Federation, they are chosen by its House of Representatives, and for the Republika Srpska the competent body is the National Assembly (Art. VI, clause 1 of the constitution). The Constitutional Court judges serve a five-year term and are not eligible for re-election.<sup>28</sup> This is meant to prevent partiality in rulings and to promote the Court as an objective and just body, especially since its purview is quite broad, even if it is typical for its kind of judicial power. Its responsibilities include ruling on matters relevant to observance and enforcement of the constitution, on the division of responsibilities between respective entities or between the republic and its entities, on the conformity of legislation with the constitution, and expressing opinions on the conformity of the constitution of BiH with international law, such as the European Convention of Human Rights and Fundamental Freedoms together with its protocols. In addition to this, it also has appellate jurisdiction over court rulings anywhere in Bosnia and Herzegovina. Compared to the other institutions, the Constitutional Court is among the weakest links in the state's political system. In particular, its rulings often fail to be implemented, resulting in a great deal of chaos which threatens the legal order in this newly independent republic.<sup>29</sup>

In order to offer a proper description of the political system of any country, due consideration must be given to its political parties, especially those that have a pronounced influence on political life; that is, those represented in parliament and thus having an impact on the country's policies and on the effectiveness of decisions that are being implemented. The multi-ethnic Republic of Bosnia and Herzegovina rightly contours its party system. It is hardly surprising, therefore, that multi-ethnicity is also reflected in political parties. There are parties that unite only Bosnians, or only Serbs, or only Muslims. There are those that include Serbs, Bosnians, and Muslims based on ethnic parity. The former include the Democratic Action Party (Stranka Demokratske Akcije, SDA), a typical ethnic party of Muslims, which won nine parliamentary seats in 2006.<sup>30</sup> It stands out for being the first Bosnian party with a clear nationalist profile since Yugoslavia decided to give up one-party rule and introduce pluralism. The group still enjoys undiminished popularity. Another notable political force is the Independent Social Democrats' Party (Stranka Nezavisinih

<sup>28</sup> The requirements set for this honorary post include being a distinguished lawyer with an unblemished record. Judges appointed by the Chairman of the European Human Rights Tribunal must not be citizens of BiH or any neighbouring country.

<sup>29</sup> Often it took a reminder from the High Representative for a decision to be implemented. A good example is the rotation in the offices of Chairman and Deputy Chairmen in the House of Representatives, which only took effect after a reminder from the High Representative. Cf. W. Konarski, A. Koseski (eds.), *Balkany. Ernokulturowe...*, pp. 174-176.

<sup>30</sup> It was formed in October 1990 by Alija Izetbegović, Muhamed Filipović, and Fikret Abdić.

Socijaldemokratu, SNSD), which is particularly active in the Republika Srpska.<sup>31</sup> In the 2006 parliamentary elections, it entered the House of Representatives with seven deputies. Its is headed by the present premier of Republika Srpska, Milorad Dodik, while one of its members, Niebojsza Radmanović, represents the Serbian minority in the Republic's Presidency. Another major group is what is possibly the most liberal, multi-ethnic Party for Bosnia and Herzegovina (Stranka Bosne i Hercegovine, SBiH). Apparently free from a nationalist slant, this party won as many as eight seats in the House of Representatives in 2006.<sup>32</sup> The Social Democratic Party of Bosnia and Herzegovina (Social Demokratka Partija Bosna i Hercegovina, SD BiH) led by Zlatko Lagumdžija (the former chief of diplomacy) is present in the House of Representatives with five deputies, while one of its members, Željko Komić, was delegated to the Presidency.<sup>33</sup> A clearly right-wing party of Bosnian Serbs is the Serbian Democratic Party (Srpska Demokratka Stranka, SDS), which only secured three seats in the House of Representatives in 2006.<sup>34</sup> One more party with three representatives in the House is the independent Croatian Democratic Party of Bosnia and Herzegovina (Hrvatska Demokratka Zajednica Bosna i Hercegovina, HDZ BiH).<sup>35</sup>

It would be a mistake to reduce the political scene to relevant parties for they are not the sole political players involved in decision-making and the further development of the political system. It is only appropriate to mention other parties which, although not represented in parliament, remain significant actors on the political scene. They include the Bosnian-Herzegovinian Patriotic Party (Bosnanskohercegovacka Patriotska Stranka), the Democratic People's Community (Demokratska Narodna Zajednica), New Croatian Initiative (Nova Hrvatska Inicijativa, NHI), the Croatian Peasants' Party (Hrvatska Seljackska Stranka, HSS), the Democratic Progress Party (Partija Demokratskog Progres, PDP), the Democratic People's Alliance (Demokratski Narodni Savez), the Liberal-Democratic Party (Liberalna Demokratska Stranka), and the Civic Democratic Party (Gradjanska Demokratska Stranka, GDS).<sup>36</sup>

<sup>31</sup> The party was created in 1996 by independent members of a parliamentary club in the National Assembly of Republika Srpska. It merged with the Democratic Party of Socialists in 2001.

<sup>32</sup> The party's main tenets included a centralized state and the abandonment of divisions of peoples as inhabiting territorial units.

<sup>33</sup> The party was founded in 1999 on the initiative of two parties: the Social-Democratic Party (Socijaldemokratska Partija – SDP) and the Union of Social Democrats of Bosnia and Herzegovina (USD BiH).

<sup>34</sup> The party was founded in 1990 with Mladen Bosić as its leader; its members included the infamous politician Radovan Karadžić, accused of crimes against humanity; cf. E. Bujwid-Kurek, *Państwa jugosłowiańskie...*, passim.

<sup>35</sup> The party was founded in 1990 as a branch of the Croatian Democratic Community in Croatia. It split to produce in 2000 a fairly powerful group of moderate politicians led by Kresimir Zubak; it was they who created the party named the Croatian People's Initiative.

<sup>36</sup> Cf. J. Wojnicki, *Przeobrażenia ustrojowe państw jugosłowiańskich (1990-2003)*, Pułtusk 2003, pp. 221-224. The issue is also addressed in E. Bujwid-Kurek, *Państwa jugosłowiańskie...*, pp. 136-148.

### 3. SPECIAL WAYS OF MANAGING PUBLIC LIFE

The new state faced special challenges as a result of Balkan realities. Its multi-ethnicity has triggered, and may continue to threaten to do so in the future, conflicts of a nationalist nature. Hence it has been necessary to institute preventive measures which would guard against a recurrence of such a danger. To this end, the office was created of High Representative, which was responsible for civilian matters.<sup>37</sup> Apart from this safeguard in the civilian sphere, an International Peace-Keeping Force is present to maintain peace in this highly charged ethnic situation. This means especially the international Implementation Force (IFOR), which was deployed in Bosnia and Herzegovina almost immediately after the peace accord was signed. It replaced the United Nations Protection Force (UNPROFOR) which had been previously stationed there. The chief tasks passed on to IFOR included ensuring implementation of the Dayton accords, supervising the defined inter-ethnic boundaries and external borders, protecting humanitarian missions present on BiH territory, monitoring population migrations, supervising mine-sweeping operations, overcoming any effects of the war, and creating a favourable climate for a truly free election according to civilized European standards. After IFOR had completed its mission, the UN Security council decided that its place could be taken by a Stabilization Force (SFOR) with only half the number of the previous personnel, which could address many more extra-military aspects of the republic's security.<sup>38</sup> The 1995 Dayton accords provided for the creation of the office of the High Representative in Bosnia and Herzegovina (OHR). The office was given a set of difficult tasks. First, the High Representative, who represented the international community including the UN, was charged with supervising the implementation of the Dayton accords in civilian matters. He was given competence to use the so-called Bonn authorization<sup>39</sup> which gave him the power to remove officials in both entities of the republic if their behaviour could hamper the implementation of the peace process, and in especially controversial or difficult situations. In cases when the parties were unable to establish a consensus, he was authorized to act on his own discretion.<sup>40</sup> It should be noted that from the moment this office was introduced to Bosnia and Herzegovina, i.e., from 1995 until 30 June 2008, the remit of the High Representative kept evolving. At first, it embraced supervising the implementation of the peace process, but later it was extended to

<sup>37</sup> The constitution of BiH of 14 December 1995, does not legitimize this office; its legal guarantees are provided by Annex 10 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

<sup>38</sup> The decision was taken in December 1996. Such peculiar management of the country evolved after December 2004. These troops were successfully replaced by European Union forces.

<sup>39</sup> That authorization was added to the Dayton accords in 1997.

<sup>40</sup> The office of the High Representative was served by the following persons: Carl Bildt (Swedish), Carlos Westendorp (Spanish), Wolfgang Petritsch (Austrian), Paddy Ashdown (British), Christian Schwarz-Schilling (German), and now Miroslav Lajčák (Slovak).

supervision of the work of civilian organizations and institutions by providing them with guidelines towards a more effective implementation of the civilian aspects of the peace accord. Finally, the High Representative was authorized to intervene if necessary in the work of respective government bodies in order to ensure that they proceeded according to the law and democratic standards. Particular attention was paid to the need to implement human rights as laid down in the UN Universal Declaration of Human Rights of 1948 and as contained in other recognized international laws which included specific rules stemming from Human Rights of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> generation.

In the context of the discussion presented above, one may reflect on what will happen when the High Representative's mandate finally expires, i.e., when no other politician is elected for another term to safeguard peace in a state with such a complex structure. Such a situation has been anticipated. According to a UN decision, the mandate expires on 30 June 2008. Apparently, international bodies have decided that Bosnia and Herzegovina, although young in independent statehood, has met the required standards, and they have confidently concluded that it will rise to all the difficult challenges which used to arouse mistrust. If indeed a watchdog is no longer indispensable to maintaining peace in the republic, then this suggests, for the present at least, that its constituent nationalities have grown up and their behaviour and attitudes attest to their maturity and readiness for peaceful coexistence. We may only hope that such events as the independence of Kosovo do not trigger claims such as those that spurred the conflict of the 1990's.

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